

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

DUSA PHARMACEUTICALS, INC.,  
a New Jersey corporation; and  
QUEEN'S UNIVERSITY AT  
KINGSTON, a Canadian academic  
organization,

Plaintiffs,

v.

NEW ENGLAND COMPOUNDING  
PHARMACY, INC., a Massachusetts  
corporation,

Defendant.

Civil Action No. 04-12703-NMG

**Oral Argument Requested**

**PLAINTIFFS' MOTION TO COMPEL ENTRY AND  
INSPECTION OF DEFENDANT'S PREMISES AND OPERATIONS**

Pursuant to Federal Rules of Civil Procedure 26, 30, and 37, and Local Rules 7.1 and 37.1, Plaintiffs DUSA Pharmaceuticals, Inc. ("DUSA") and Queen's University at Kingston ("Queen's University") (collectively "Plaintiffs") hereby move this Court to order Defendant New England Compounding Pharmacy, Inc. ("Defendant") to permit access to Plaintiffs and their agents for entry and inspection of Defendants' premises and operations believed to be located at 697 Waverly Street, Framingham, Massachusetts 01702. The grounds for this motion are set forth fully in the accompanying memorandum of law. Briefly stated, Defendant alleges a five-count counterclaim that make the quality and source of its ALA-containing product a central issue in this case. The manner and conditions under which Defendant's ALA-containing product is made, as well as the procedural safeguards associated with the storage, labeling, packaging and record keeping system are thus highly relevant and an appropriate area for discovery.

WHEREFORE Plaintiffs respectfully request that this Court grant their Motion and enter the accompanying proposed order compelling Defendant permit an entry and inspection of its facility and operations within seven (7) days of the date of the Order. Such inspection shall include all relevant areas of Defendant's premises likely to lead to the discovery of admissible evidence, shall not be limited to Defendant's compounding "laboratory," and shall include the inspection of all containers and cabinets contained therein. Plaintiffs also request that, in accordance with Fed. R. Civ. P. 37, they be awarded the costs incurred in bringing this motion, including reasonable attorneys' fees.

**REQUEST FOR ORAL ARGUMENT**

Plaintiffs hereby request oral argument on this Motion.

Respectfully submitted,

DUSA PHARMACEUTICALS, INC. and  
QUEEN'S UNIVERSITY AT KINGSTON

By their attorneys,

**/s/ Mona M. Patel**

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Dated: September 8, 2005

**CERTIFICATE OF COMPLIANCE WITH LOCAL RULES 7.1 AND 37.1**

I hereby certify that, as detailed in the accompanying affidavit of Valerie Brand Pipano, Esq., prior to filing this motion, counsel for the Plaintiffs conferred by letter, telephone and e-mail with Daniel Rabinovitz, Esq., counsel for Defendant, on August 12, 15, 18, 19 and 26, 2005, in good faith efforts to resolve the issues raised by this Motion to Compel Entry and Inspection of Defendant's Premises. Those efforts were not successful.

**/s/ Valerie Brand Pipano**

Valerie Brand Pipano

Dated: September 8, 2005

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